

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN - Division

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2006 JUL 10 A 10:00

Kym Gray # 203553 R
PLAINTIFF

CLERK & CLERICAL CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

- VS. -
PAUL WHALEY/
DEFENDANT

CIVIL ACTION NUMBER:
2:06-CU-107-MEF

STATE OF ALABAMA
Bibb County

SWORN AFFIDAVIT
TRAVERSE TO ANSWER

My name is Kym Gray A.I.S. number TO BE 203553
And I am OVER THE AGE OF (21) TWENTY-ONE YEARS, AND
I am CURRENTLY being Confined in AN ALABAMA STATE
PENITENTIARY, SERVING A SENTENCE OF (50) FIFTY-YEARS
FOR THE OFFENSE OF MURDER From THE County of
LOWNDES ON, OR About THE 12th DAY OF MARCH,
1999.

PURSUANT TO THE INSTRUCTIONS OF THIS COURT, THE
FOLLOWING NOTICE OF OBJECTION is SUBMITTED WITH
REGARD TO DEFENDANT WHALEY'S MOTION FOR SUMMARY JUDGMENT
FOR HIS [WHALEY] SLANDEROUS AND DEFAMATORY LIBELOUS
STATEMENT SUBMIT TO THIS HONORABLE COURT REFUTING
GRAY'S COMPLAINT.

PLAINTIFF GRAY DOES RESPECTFULLY SUBMIT HIS
GENERAL RESPONSE IN GOOD FAITH SEEKING THIS
HONORABLE COURT'S JUDICIAL REVIEW OF PLAINTIFF'S
UNDERLYING FACTS AND ISSUES) THEREIN OF [GRAY'S]
1983 CIVIL COMPLAINT PURSUANT TO THE PROVISIONS
SET-FORTH IN 42 U.S.C.

1. PLAINTIFF GRAY STATES THAT UNDER THE CIVIL RIGHTS ACT OF 1871 AND AS AMENDED A, PRISONER [GRAY] MAY SEEK REDRESS WHEN A, PERSON [WHALEY] ACTING UNDER COLOR OF STATE LAW [M] IS USE OF POWER POSSESSED BY VIRTUE OF STATE LAW, AND DEFENDANT WHALEY'S ACTION WERE MADE POSSIBLE ONLY BECAUSE THE WRONGDOER IS CLOTHED WITH AUTHORITY OF STATE LAW.
2. PLAINTIFF GRAY ARGUES THAT DEFENDANT WHALEY IS REQUESTING MOTION FOR SUMMARY JUDGMENT TO BE GRANTED AND GRAY DOES "STRONGLY ENTER" HIS OBJECTION FOR SUMMARY JUDGMENT WHICH PLAINTIFF GRAY SAY "MUST FAIL" IN THIS CAUSE BEFORE THIS HONORABLE COURT [GRAY] STATES FOR THE RECORD THAT THE ISSUES AND FACTS CONTAINED THEREIN OF GRAY'S COMPLAINT IS MERITORIOUS ON IT'S FACE. FURTHER PROCEEDINGS ARE NEEDED IN THIS CAUSE TO PROTECT GRAY'S CONSTITUTIONAL RIGHTS AS SECURED UNDER THE CONSTITUTION OF THE UNITED STATES.

3. PLAINTIFF Gray DULS ASSERTS THAT DEFENDANT WHALEY,
 IS NOT ENTITLED TO QUALIFIED IMMUNITY OR
 ABSOLUTE IMMUNITY AS SOUGHT BY DEFENDANT WHALEY
 IN THIS YOUR PLAINTIFF'S CASE-IN-CHIEF.
 DEFENDANT Whaley HAS ENTERED INTO THE RECORD OF
 THIS MATTER FALSE AND ERRONEOUS INFORMATION
 IN HIS [Whaley] GENERAL DEFENSE PLEA'S, WHICH
 IS WRONG. PLAINTIFF Gray RELIES ON THE
 CASE AUTHORITY OF WEST U. ATKINS 487 U.S. 42
 54-55 [1988] SEE: FLINT U. KENTUCKY DEPARTMENT -
OF CORRECTIONS, 270 F.3d 220 - 255
 [6th Cir. 2003] SEE: Smith U. Wade
 461 U.S. 30 51 [1983].

PLAINTIFF Gray STATES THAT HIS CRIMINAL CONVICTION
 AND SENTENCE WAS FOR THE CRIMINAL OFFENSE OF
MURDER AND THE RECORD AND/OR COURT PROCEEDINGS
 DOES NOT INDICATE THAT [Gray] had RAPED
 AND/OR FORCED THE VICTIM TO WIT:

CAROLYN McMEANS Gray TO HAVE "SEX WITH GRAY
 BEFORE HER UNTIMELY DEATH THIS RECORD IS SILENT
 AND THE OFFICES OF THE DISTRICT ATTORNEY NEVER
 PRODUCED EVIDENCE THAT PLAINTIFF GRAY SEMIN AND/OR
FLUIDS WERE FOUND INSIDE THE VICTIM'S BODY AND/OR
VAGINAL. THE LAW IS WELL SETLED IN ALABAMA
 IN WHICH THE COURTS HAVE RULED THAT NOTHING
 CAN BE PRESUMED FROM A "SILENT RECORD".

PLAINTIFF GRAY STATES THAT DEFENDANT WHALEY, HAS
 INTENTIONALLY SLANDERED HIS CONVICTION IN WHICH
 WHALEY IS LIBEL.

FOR ENTERING FALSE AND ERRONEOUS INFORMATION
INTO A.D.O.C. FILES THAT GRAY CAN ONLY
CHARACTERIZE AS "EVIL MOTIVES OR WILL
TAKEN IN SUCH RECKLESS AND CALLOUS DISREGARD
FOR PLAINTIFF Gray's FEDERAL RIGHT CITING
NIEETO U. KAAR 268 F.3d 1208 1221-23
[10th Cir. 2001].

PLAINTIFF Gray DOES CONTENDS THAT
DEFENDANT Whalley IS NOT ENTITLED TO ABSOLUTE
AND QUALIFIED IMMUNITY FROM Gray's 1983
CIVIL COMPLAINT INSOFAR AS Whalley's Conduct
AND ACTIONS DID VIOLATE CLEARLY ESTABLISHED
STATUTORY AND CONSTITUTIONAL RIGHTS OF [GRAY]
OF WHICH A, REASONABLE PERSON [Whalley] WOULD
HAVE KNOWN CITING: HUNTER U. BRYANT 502
U.S. 224 228 (1991) [PER CURIAM].

THE ISSUE OF IMMUNITY IS AN QUESTION FOR
THIS HONORABLE COURT TO DECIDE SLEK:

CERRONE N. BROWN 246 F.3d 194 198
[2nd Cir. 2001] PLAINTIFF Gray DOES ASK OF
THIS COURT FOR ITS DE NOVO REVIEW Gray has
SUBMITTED CASE AUTHORITY IN SUPPORT OF HIS
COMPLAINT / ALLEGATION SURROUNDING DEFENDANT
Whalley SLANDEROUS AND DEFAMED STATEMENT
SLEK: [ATTACHED EXHIBITS].

PLAINTIFF GRAY STATES THAT HE IS ENTITLED TO
CLASSIFICATION OF LESSER RESTRICTED
INSTITUTIONAL PLACEMENT AS A.D.O.C. RULES
AND REGULATIONS, DOES ALLOW.
[4].

MURDERS TO ACHIEVE STATUS OF PLACEMENT
AT Honor Camps within THE PROPERTY OF
THE A.A.C.C. NOT INTO THE COMMUNITIES.
"THEREFORE FOR GOOD CAUSE"

1. THAT THIS COURT ENTER IT'S ORDER DENYING DEFENDANT WHALEY REQUEST FOR ABSOLUTE AND QUALIFIED IMMUNITY.
2. THAT THIS COURT WOULD PROCEED UNDER IT'S RULE TO EXAMINE THE POTENTIAL MERITS OF PLAINTIFF'S COMPLAINT, AND AFFORD GRAY THE DEFERENTIAL WEIGHT OF HIS ALLEGATION AND GRANT RELIEF AS PLAINTIFF SO DESERVES IN THIS CAUSE.
3. THAT THIS COURT WILL GRANT ANY OTHER AND DIFFERENT RELIEF TO WHICH PLAINTIFF GRAY MIGHT OTHERWISE BE ENTITLED.

Conclusion

WHEREFORE PREMISES TO BE CONSIDERED PLAINTIFF GRAY, DOES ARDENTLY PRAYS THAT THIS COURT WILL GRANT RELIEF AS SOUGHT IN THE PLAINTIFF'S COMPLAINT.

CERTIFICATE OF SERVICE

VERIFICATION

This does hereby CERTIFY THAT Kym Gray has SERVED UPON THE OFFICE OF THE CLERK Debra P. Hackett UNITED STATES DISTRICT COURT AND UPON ALL PARTIES INVOLVED IN THIS ACTION A COPY OF THE.

[57]

FORGOING PLEADINGS, BY PLACING SAME IN THE
UNITED STATES POSTAL MAIL.

SWEORN TO AND SUBSCRIBED BEFORE ME
THIS 5 DAY OF JULY 2006

NOTARY PUBLIC : SO. D. GIBSON COT
MY COMM. EXPIRES : MY COMMISSION EXPIRES 6-02-2010

CC : Kim T. Thomas
COUNSEL FOR DEFENDANT
ALABAMA DEPARTMENT OF CORRECTIONS
301 - SOUTH RIPLEY STREET
P.O. Box 301501
MONTGOMERY, ALABAMA
36130-1501

RESPECTFULLY SUBMITTED

Kym Gray

Kym Gray
A.I.S. #03553

Bibb Correctional Facility
565 - Bibb Lane
Brent, Alabama

35034

CC : PERSONAL FILE

[6].

MY COMMISSION EXPIRES 6-02-2010